

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO. 483 OF 2006

Mr. Joyce Maben .. Petitioner

Vs.

The State of Maharashtra .. Respondent

Mr. A.M. Saraogi for the petitioner.
Mr. I.S. Thakur, APP for State.

**CORAM : B. H. MARLAPALLE &
SMT. R.S. DALVI, JJ.
Date : February 28, 2006.**

P.C.:

1. Heard Mr. Saraogi, the learned counsel for the petitioner and Mr. Thakur, the learned APP.

2. The petitioner invoked Article 226 of the Constitution praying for direction from us for permitting the second post mortem on the dead body of Mr. Reveilia Richard Maben.

3. The petitioner has stated on oath that she is the mother of the deceased and the police officers from the D.N. Nagar Police Station had arrested her son Reveilia from Powai on the allegations of the offences and the inquiry therein. She claims that the police had assured her that her son would be back within 24 hours. But subsequently she came to know that her son was killed by the police officers. As

per the petitioner the post mortem was completed but she was not very confident of the report being honest and free from any lapses and, therefore, she prayed for directions to carry out the second post mortem.

4. When the petition was called out for hearing Mr. Saraogi the learned counsel for the petitioner conceded that petitioner was not aware regarding the identity of the concerned police station though it was contended that the petitioner had gone to the J.J. Hospital and seen the dead body of Reveilia. Mr. Thakur, the learned APP, therefore, sought time to take instructions regarding the concerned police station as well as the name of the hospital where the dead body is preserved presently.

5. We are now informed that on 25/2/2006 Mrs. Mona Sajjan Kamokar approached the Sr. Police Inspector, Andheri Police Station and claimed that she is the sister of the deceased namely Reveilia @ Ravi Master Richard Maben, aged about 28 years. In her recorded statement and signed by her she claimed that she is residing at Kondivita, A-303, Hafija Chawl, M.I.D.C. Andheri (East), Mumbai - 93 and gave her Cell No.9819500582. She stated that she is married and her husband Mr. Sajjan is presently at Muscat and

the deceased was her real brother. She further stated that Mrs. Joyce Maben is her aunt (mother's sister) and there is no other family member that the deceased has left behind. The concerned police station approached the Medical Officer, J.J. Coroner and sought permission to hand over the dead body and on 26/2/2006 the dead body came to be handed over to Mrs. Mona Sajjan Komkar some times in the afternoon.

6. The present petitioner is thus not the mother of the deceased and the deceased was not her son. The sister of the deceased claimed the dead body on 25/2/2006 and it was handed over to her on 26/2/2006. The information put before us by Mr. Saraogi regarding the present location of the dead body was not correct and now it is revealed that the same is preserved with John Pinto, Official Funeral Directors, Embalmers, 28, Readymoney Bldg., 7-Clare Road, Byculla, Mumbai 400 008.

7. In normal circumstances there could be no objection in entertaining such a prayer as has been made in this petition provided the dead body was lying with any of the Government hospitals. The dead body has already been handed over and it is claimed to be in a preservater run by a private party. It has also

been stated by the learned APP that the Sessions Court had declared the deceased as an absconder and the proclamation has been issued against him. We are also not satisfied with the statement made in the petition memo that the deceased was taken away from the custody of the petitioner by the police from her or his residence. As per the information now placed before us the encounter had taken place in the Andheri suburbs on 24/2/2006 and the Assistant Inspector of Police is also claimed to have sustained injuries in the same. Mr. Saraogi has also placed before us a copy of the certificate signed by the Medical Officer, J.J. Post Mortem Centre signed on 25/2/2006 and the provisional cause of death is shown as "Haemorrhage and shock due to firearm injuries (unnatural)"

8. Taking into consideration the obtaining circumstances, we do not think that this is a fit case to entertain the prayer for a fresh post mortem examination to be carried out and hence the petition is rejected.

9. We have to also make it clear that the observations made in this order will not come in the way for challenging the encounter.

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(Smt.R.S. Dalvi, J.)

(B.H. Marlapalle, J.)